

1 KAREN P. HEWITT
United States Attorney
2 DAVID D. LESHNER
Assistant U.S. Attorney
3 Federal Office Building
880 Front Street, Room 6293
4 San Diego, California 92101-8893
Telephone: (619) 557-7163
5 David.Leshner@usdoj.gov

6 Attorneys for Plaintiff
United States of America

7 UNITED STATES DISTRICT COURT
8
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 CARLOS LOPEZ-GARCIA,

14 Defendant.

) Criminal Case No. 08-CR-0712-L
)

) DATE: April 14, 2008
)

) TIME: 2:00 p.m.
)

) **UNITED STATES' NOTICE OF MOTIONS
AND MOTIONS FOR:**
)

15) **(1) FINGERPRINT EXEMPLARS**
)

16) **(2) RECIPROCAL DISCOVERY**
)

17 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel,
18 Karen P. Hewitt, United States Attorney, and David D. Leshner, Assistant United States Attorney,
19 and hereby files its Motions for Fingerprint Exemplars and Reciprocal Discovery in the
20 above-referenced case. Said motions are based upon the files and records of this case together with
21 the attached memorandum of points and authorities.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I**

3 **STATEMENT OF THE CASE**

4 On March 12, 2008, defendant Carlos Lopez-Garcia was arraigned on a one-count indictment
5 charging him with a violation of Title 8, United States Code, Sections 1326(a) and (b). Defendant
6 entered a plea of not guilty.

7 **II**

8 **STATEMENT OF FACTS**

9 **A. Defendant's Apprehension**

10 On February 13, 2008, Border Patrol Agent J. Saracco observed Defendant walking on
11 Highway 86 near Westmorland, California. Agent Saracco pulled over in his vehicle and engaged in
12 a consensual conversation with Defendant on the side of the road. During that conversation,
13 Defendant stated that he was a citizen of Mexico and that he had no documents allowing him to
14 lawfully enter or remain in the United States. Defendant further represented that he had entered the
15 United States illegally on foot near the Tecate, CA Port of Entry in January 2008. Based on this
16 information, Agent Saracco arrested Defendant and transported him to the Border Patrol Highway
17 86 Checkpoint for processing.

18 Defendant received Miranda warnings and agreed to make a statement. According to
19 Defendant, he is a Mexican citizen with no entitlement be in the United States. Defendant further
20 admitted that he previously had been ordered deported by an Immigration Judge and that he had
21 returned to the United States to find work.

22 **B. Defendant's Immigration History**

23 Defendant is a citizen of Mexico. On April 16, 1993, he was removed from the United States
24 to Mexico pursuant to an Order of an Immigration Judge. Defendant also was removed from the
25 United States to Mexico on January 8, 1998.

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1 **C. Defendant's Criminal History**

2 On or about November 13, 1995, Defendant was convicted in Orange County Superior Court
3 of First Degree Robbery, Second Degree Robbery and Assault with a Deadly Weapon, in violation
4 of Penal Code §§ 211 and 245(a)(1). Defendant was sentenced to a total term of 5 years
5 imprisonment.

6 **III**

7 **UNITED STATES' MOTIONS**

8 **A. Motion For Fingerprint Exemplars**

9 The Government requests that the Court order Defendant to make himself available for
10 fingerprinting by the Government's fingerprint expert. See United States v. Ortiz-Hernandez, 427
11 F.3d 567, 576-77 (9th Cir. 2005) (Government may have defendant fingerprinted and use criminal
12 and immigration records in Section 1326 prosecution). Identifying physical characteristics,
13 including fingerprints, are not testimonial in nature, and the collection and use of such evidence
14 would not violate Defendant's Fifth Amendment right against self-incrimination. United States v.
15 DePalma, 414 F.2d 394, 397 (9th Cir. 1969). See also Schmerber v. California, 384 U.S. 757, 761
16 (1966) (withdrawal of blood is not testimonial).

17 **B. Motion For Reciprocal Discovery**

18 The Government has and will continue to fully comply with its discovery obligations. To
19 date, the Government has provided Defendant with 49 pages of discovery and one DVD, including
20 reports of his arrest, his rap sheet, and copies of immigration and conviction documents.

21 The Government moves the Court to order Defendant to provide all reciprocal discovery to
22 which the United States is entitled under Federal Rules of Criminal Procedure 16(b) and 26.2.
23 Specifically, Rule 16(b)(1) requires Defendant to disclose to the United States all exhibits,
24 documents and reports of testing or examination which Defendant intends to use in his case-in-chief
25 at trial and a written summary of the names, anticipated testimony, and bases for opinions of experts
26 the defendant intends to call at trial under Rules 702, 703, and 705 of the Federal Rules of Evidence.

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IV

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court grant its motions.

DATED: March 25, 2008.

Respectfully submitted,

Karen P. Hewitt
United States Attorney

s/ David D. Leshner
DAVID D. LESHNER
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case No. 08-CR-0712-L
)	
Plaintiff,)	
)	
v.)	
)	CERTIFICATE OF SERVICE
CARLOS LOPEZ-GARCIA,)	
)	
Defendant.)	
_____)	

IT IS HEREBY CERTIFIED THAT:

I, DAVID D. LESHNER, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **UNITED STATES NOTICE OF MOTIONS AND MOTIONS FOR FINGERPRINT EXEMPLARS AND RECIPROCAL DISCOVERY** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Paul Turner, Esq.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 25, 2008.

/s/ David D. Leshner
DAVID D. LESHNER